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ABSTRACT

International exchange agreements potentially serve to facilitate the free access to official materials from abroad, similar to depository programs for national official publications collections and with corresponding issues of collecting and archiving electronic publications. In this connection, it is necessary to distinguish between exchange relations of individual institutions and those of states intending to inform each other of their activities as expressed in government publications. This report reviews the United Nations Educational, Scientific, and Cultural Organization (UNESCO) Convention of 1958 Concerning the International Exchange of Official Publications and Government Documents between States, considering its most important statements and determinations, as well as describing the practice of their implementation in Germany by the Exchange Centre in the Berlin State Library. (Author/MES)

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International Exchange of Official Publications

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Abstract

International exchange agreements potentially serve to facilitate the free access to official materials from abroad, similar to depository programs for national official publications collections and with corresponding issues of collecting and archiving electronic publications. In this connection, we have to distinguish between exchange relations of individual institutions and those of States intending to inform each other of their activities as expressed in government publications. Therefore, this report mainly aims to review the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention of 1958 Concerning the International Exchange of Official Publications and Government Documents between States, considering its most important statements and determinations as well as describing the practice of their implementation in Germany by the responsible Exchange Centre in the Berlin State Library.

Paper

Preliminary Note

It is the object of this report to review the concept and the legal foundations of the international exchange of official publications, as well as to describe their implementation by the German Exchange Centre which is part of the Berlin State Library. With respect to the future of international exchanges, there are much the same questions and problems as regards national depository programs, and there are corresponding deliberations as to how they can be

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resolved.

As technology develops and world-wide networking increases, new methods are applied to the exchange of official information between states. It is all the more important therefore to provide free access to such information in electronic format, not only at home, but also in at least some central places abroad set up for that purpose. The central idea in international exchanges is that each participating country will obtain official material from its exchange partner in order to provide it directly to its own domestic users. At least, this will be the case when foreign publications remain in the library where the exchange centre is situated, instead of being distributed to various institutions around the country.

It will not do to have Internet access to foreign material if it remains uncertain how long documents will be retained on these databases. Even if long-term access is secured, it might still be preferable to collect foreign public documents in electronic formats in order to have an independent and continuous collection for future historical research. Governments and their political interests change, and authorities are established only to vanish again. Using electronic collections in national libraries, for example, requires that the libraries themselves receive and store everything and are able to guarantee permanent access under varying technical conditions. Moreover, it must be remembered that peaceful, friendly relations between nations are also subject to change. If this reality is fully appreciated in central government documents libraries, it means that texts available on the Internet should be downloaded, copied or printed out, and entered into the general or the special electronic publications collections. However, at present the exchange is still largely following traditional ways, with CD-ROMs and diskettes being distributed in the same manner as conventional printed material. In order to preserve them, they have to be recopied from time to time, like all other electronic formats. But there are additional problems of maintaining the respective software necessary for reading such publications (e.g. Adobe Acrobat Reader).

The 1958 UNESCO Conventions

Let me now describe the current international legal basis of international exchanges the principles of which may also be valid for the future. At its tenth session, on 3 December 1958, the General Conference of the UNESCO in Paris adopted two conventions: the Convention Concerning the International Exchange of Publications, and the Convention Concerning the Exchange of Official Publications and Government Documents between States. It would take too long to enter into the preceding discussions and negotiations, above all of the conferences of experts organized by the Directorate-General of UNESCO in February 1956 and May/June 1958, as interesting as this might be. I want however to mention the following points.

Originally, a single Convention for the exchange of official and non-official publications had been scheduled. On the suggestion of France, it was finally decided to adopt two separate Conventions, thus emphasizing the distinction between "official" and general "scientific" exchanges. The second case applies to individual exchange relations between institutions (including official bodies) which are merely to be encouraged and facilitated by the Contracting States, whereas in the first case the Contracting States engage themselves (within the reservations following from the Convention) to enter into exchange relations in order to inform each other on their activities as expressed in government publications.

The new Conventions were destined to replace the earlier "Convention for the International Exchange of Official Documents, Scientific and Literary Publications", concluded in Brussels in 1886 (1), which had turned out to be inadequate. Its main defect was that the participating states were obliged to exchange all their official publications with each other, in consequence of which a number of important states, such as France, Germany, Great Britain, and the USSR, did not accede. Besides, the Brussels Convention was criticized for its vague and out-of-date definition of official exchange material which included apart from "official documents, parliamentary and administrative, which are published in the country of their origin" also all "works executed by the order and at the expense of the governments". This appeared to be

problematic above all with regard to those countries where book production was largely financed with public funds. However, in the deliberations for the new Convention concerning official publications, the authors also refrained from attempting a more exact definition of this term.

Let us consider the most important statements and determinations of the Convention Concerning the Exchange of Official Publications and Government Documents between States (2). This term alone expresses already that direct exchange relations between the Contracting States are concerned. The principles of these exchange relations are put down in Articles 1 to 3. In Article 1, "the Contracting States express their willingness to exchange their official publications and government documents, on a reciprocal basis, in accordance with the provisions of the present Convention". The formula "express their willingness" avoids the direct commitment of individual states to enter into exchange relations with all other Contracting States, circumventing the problem inherent in the Brussels Convention of 1886. Thus, the unanimous adoption of the Convention by the General Conference of UNESCO and its subsequent ratification or acceptance by the States implies nothing more, from a legal point of view, than informal assent to the reciprocal exchange of official publications. Still, it implies support for establishing and implementing such exchange relations with individual states. Accordingly, our Exchange Service in Berlin when establishing new exchange relations, in each case points out that the exchange is taking place in accordance with the definitions of this Convention, even when dealing with those states which have not yet acceded to the Convention. Relating to the "reciprocal basis", it should be noted that with all exchange relations the principle of balanced shipments is always maintained. This regulation guides the volume of exchanges. The individual state may contribute additional material, especially when they have an interest in maintaining a presence in the other country.

Article 2 presents a "Definition of Official Publications and Government Documents" without pretending to be exhaustive, giving a general idea of the objects of exchange. This is done by the enumeration of typical official publications, as eventually agreed upon in the preparatory expert talks, namely "parliamentary documents, reports and journals and other legislative papers; administrative publications and reports from central, federal and regional governmental bodies; national bibliographies, State handbooks, bodies of law, decisions of the Courts of Justice; and other publications as may be agreed". The expression "and other publications ..." encourages inclusion of any additional documents regarded as official in individual countries and therefore liable for exchange. At all events, the publications concerned have to be "executed by the order and at the expense of any national government authority". This narrow definition of official materials was taken almost word by word from the Brussels Convention of 1886, where it appeared however in another context. In the new Convention, it precedes all items listed as examples of "official" materials. In my opinion, this definition is highly problematic, as there may very well be official publications only partly or indirectly financed by public funds. The decisive question should be the official status of the issuing or ordering agency regardless of its financial involvement. In normal practice, this will hardly make a difference, as exchange partners will offer only such publications which pass for "official" in their own country. Anyway, according to Article 2.2, the Contracting States are generally "free to determine the official publications and government documents which shall constitute exchange material"; excluded however are "confidential documents, circulars and other items which have not been made public" (Article 2.3).

Special weight is carried by Article 3 which determines that "the Contracting States, whenever they deem it appropriate, shall enter into bilateral agreements for the purpose of implementing the present Convention and regulating matters of common concern arising out of its application". This means "formal" inter-governmental agreements normally concluded by the exchange of notes. The alternative are direct "informal" arrangements or the conclusion of so-called "administrative agreements" between the exchange authorities. In any case, bilateral agreements - in whatever form - are necessary to set in motion the exchange between the individual Contracting States, especially since the Convention leaves the clarification of certain questions, like the publications due for exchange, to such agreements. In connection

with Article 1, they are also required from the legal point of view, as only then is the "willingness" replaced by a commitment to the exchange of official publications. Informal arrangements are generally realized by an exchange of letters, one side proposing to establish exchange relations, and the other side accepting. Arrangements on available and requested material will then be effected by subsequent correspondence. It should be noted that for all practical purposes it has no effect on either volume or quality of exchange relations whether they have been established by government agreement or by informal arrangement. To be sure, an informal exchange arrangement may be terminated just as informally by either side, whereas a government agreement has normally to be cancelled through diplomatic channels. In some countries, exchange centres may prefer a government agreement in order to facilitate procuring publications for exchange purposes.

The following Articles are concerned with technical realization of the exchange. According to Article 4, "in each Contracting State, the national exchange service or, where no such service exists, the central authority or authorities designated for the purpose, shall carry out the functions of exchange". These "exchange authorities shall be responsible within each Contracting State for the implementation of the present Convention and of bilateral agreements as referred to in Article 3, whenever appropriate". For that purpose, they shall be given "the powers required to obtain the material to be exchanged and sufficient financial means to carry out the functions of exchange". The exchange centers must have the authority and resources, including access to copies, to fulfill their responsibilities. A clear set of national procedures is the prerequisite. These procedures may well provide funds for purchase of the exchange copies required. However, the primary intent of Convention is for national decrees to supply free copies for exchange purposes. At all events, I understand the text of the Article to the effect that it is obliging the Contracting States to provide "sufficient financial means" not in order to obtain exchange material, but primarily to maintain the functions of the exchange centre itself, inclusive shipping costs etc. The essential matter is that each side supply its own official publications (including parliamentary papers) as arranged. There are no regulations for handling received materials. Many exchange offices in national or parliamentary libraries will retain them in their own collections but, of course, they are free to redirect any publications received on exchange terms to other domestic libraries or official bodies which, in such cases, should also make them available to the public and guarantee long-term preservation and access.

Article 5 states that "the List and number of official publications and government documents for exchange shall be agreed between the exchange authorities of the Contracting States", and that this list and the number of documents "may be modified by arrangements between such authorities". In practice, however, this usually means that each side lists current official periodicals and serials in an offer of exchange material, and that this list will be modified unilaterally if certain publications cease to be published or for any other reason are no more available for exchange, and also if additional publications are offered. I think this practice will likewise come to apply to electronic documents.

Articles 6 to 9 address questions of transmission and transport of exchange material. "Transmissions may be made directly to exchange authorities or to recipients named by them." The cost of transmission as far as destination shall be borne, as a rule, by the exchange authority concerned, "but for transport by sea, the cost of packing and carriage shall be paid only as far as the customs office of the port of arrival". In this connection, the Contracting States are obliged to "take all the necessary measures to ensure that the exchange authorities benefit from the most favourable existing rates and transport conditions, whatever the means of transport chosen: post, road, rail, inland or sea transport, airmail or air cargo". Furthermore, they shall "grant its exchange authorities exemption from customs duties for both imported and exported material under the provisions of the present Convention or under any agreement in implementation thereof and shall accord them the most favourable treatment as regards customs and other facilities".

The remaining Articles 10 to 22 of the Convention mainly refer to administrative or legal

details. I should like to mention here only Articles 15.1 and 16: The Convention "shall be subject to ratification or acceptance by States members" of UNESCO, "in accordance with their respective constitutional procedures". It "shall be open for accession by all States not members of the Organization invited to do so by the Executive Board" of UNESCO.

As of 31 December 1993, 50 states have either ratified, accepted or acceded to this Convention, among them recently: Estonia (ratification in 1993), Lithuania (acceptance in 1993), the Czech Republic, the Slovak Republic, Georgia, and Tajikistan (notifications of succession in 1992 and 1993, respectively). (3)

International Exchange of Official Publications in Germany

Finally, I should like to report briefly on the exchange of official publications as practiced in the Federal Republic of Germany. The central exchange authority responsible for the implementation of the UNESCO Convention is the Department Official Publications and International Exchanges (Abteilung Amtsdruckschriften und Internationaler Amtlicher Schriftentausch) of the Berlin State Library. The ratification of the Convention by the Federal Republic did not take place until 1969. (4) This comparatively late ratification is connected with the participation of the federal States in the ratification procedure, as provided by the federal system of government in Germany, since according to Article 2.1 of the Convention not only publications from central governmental bodies, but also those from "federal and regional" bodies are covered by the exchange.

For the exchange transactions of the Department, there are decrees of the Federal and most of the State governments regulating the delivery of free copies of their publications (whatever the mode of publication) for international exchange purposes to the Berlin State Library or to the Department concerned, allowing requests of up to 20 copies (in the Federal decree) or up to 10 copies (in the State decrees). Parliamentary papers (Federal Council, House of Parliament, State Parliaments), although not covered by the decrees of the "executive", are likewise supplied free for exchange purposes. All these regulations enable the Department to make up a List of Current Official Periodicals and Series of the Federal Republic of Germany which are available for Exchange. This List is revised from time to time when titles which ceased to be published or are no longer available for exchange are cancelled and eventually replaced by new, suitable ones. Quite recently, some problems arose when individual federal agencies were repeatedly reluctant to supply copies, especially when additional copies had to be requested due to new demands from exchange partners. In such cases, the Department usually points out that it can exercise the functions of the International Official Exchange for the Federal Republic of Germany only if supply of the publications of the federal institutions concerned is guaranteed in the quantity required. A loophole in these arrangements, contained both in the federal and state decrees, permits restriction in the supply of publications for budgetary reasons, in particular "unacceptable" or "unjustifiable" encumbrance of the budget. The federal decree leaves undefined when an "unacceptable budget encumbrance" has to be considered. The state decrees are more specific, referring to the production costs of the individual item. We can suppose that the federal decree is also based on the same idea. In my opinion, an unacceptable budget encumbrance can be an excuse only if it concerns a very expensive publication, but not on account of the total quantity of exchange copies. Otherwise, the margin of up to 20 possible copies would not make any sense. In view of the restriction mentioned above, CD-ROMs or diskettes are still not offered in our official exchange list, even if they may partly be available for exchange purposes.

At present, exchange relations with thirty-eight states are maintained, with ten of these states based on bilateral agreements (Belgium, Canada, Denmark, France, Israel, the Netherlands, Norway, Spain, the United Kingdom, and the U.S.A.), with the others on informal arrangements or "administrative agreements" with the exchange centres concerned, frequently National Libraries (outside of Europe, among others: Japan, the Republic of Korea, and Taiwan). Until 1995 and 1998 respectively, we also had exchange relations with Australia and South Africa. Being informal agreements or arrangements, they could be cancelled by our

partners without notice. The National Library of Australia (Canberra) gave as reason its new collecting priorities, which emphasize materials from the Asia Pacific region. The South African State Library (Pretoria) referred to a declining budget as well as a new collection policy and informed us that they had terminated all their exchange agreements for materials in languages other than English.

As I already mentioned, official publications received in exchange are as a rule not passed on to other German institutions, but are collected in the State Library and are here made available without restrictions to visiting users and by inter-library loan. Volume and contents of incoming foreign materials are determined by the exchange partner. This corresponds to the terms of the UNESCO Convention and to the practice in bilateral arrangements, irrespective of their form. For this reason, the exchange of official publications between states varies very much both in quality and quantity. Of primary importance are parliamentary papers, law gazettes, statistical reports and other publications of ministries and central state institutions. The selection of foreign publications is made by the Department by means of supply lists and national bibliographies, among other sources. From the United States, Canada, and Japan, the Department receives the "full set", which is to say a comprehensive set of publications from the respective country. With respect to Canada, the Berlin State Library has the status of a Full Depository Library. U.S. publications (from the Federal Government and the Congress only) since 1982 have been supplied 95% in the form of microfiche. Because of its volume, this collection is not catalogued, but stored in a body inside the Department, arranged according to the "Superintendent of Documents classification number".

Objects of the exchange are chiefly current periodicals and series. As a rule, "print media" (paper editions and microforms) form the bulk of the material. In some cases, diskettes (partly as accompanying material) and CD-ROMs are received. Since 1996 the Library of Congress in Washington has been supplying U.S. official publications, including statistical and other materials from nearly all departments of the Federal Government, on CD-ROM. Although the number of items supplied and received should normally be approximately balanced, it is true that with those countries supplying a full set of publications, their publications considerably exceed those supplied by Germany. However, in the light of the rapid expansion of electronic publishing and Internet access the future of the full sets is uncertain. Similar to the United States, which is in transition to an electronic Depository Library Program, Canada is remodelling its Depository Services Program, introducing "resource" libraries with special responsibilities for electronic information. (5) At present, only Canadian institutions are concerned, so we do not yet know how it will affect foreign and exchange programs. A number of Canadian federal government publications are offered only on the Internet, among them "low demand titles" of Statistics Canada. On our request, the IP address of a PC in our Department has been added to the access file of the Depository Services Program (DSP) in order to have free web access to all the titles in the DSP's collection of electronic publications, including those of Statistics Canada.

An exchange of official publications with as many countries as possible is in practice prohibitive, for reasons of different interests, political systems, languages, and cultures, unless there are traditional relations to the countries concerned. The Department is above all anxious to conclude exchange treaties with those European countries with which as yet no exchange relations exist. The continuing difficulties have different reasons. For instance, in some National Libraries bottlenecks in their personnel and budget situation will not allow at present the implementation of exchanges, or it is impossible to procure sufficient free copies of official publications for exchange purposes. Problems may also develop when the Exchange of Publications between States and the "institutional" exchange of the State Library with central and east European national libraries overlap, as these libraries sometimes do not know how to separate the different kinds of exchange or else do not distinguish between official and non-official publications. Therefore, our Department is in close contact with the East European Department of our Library to find practical solutions for offers or requisitions for non-official publications.

The philosophy of the Exchange of Official Publications between States is "the free exchange of ideas and knowledge among the peoples of the world" (preamble of the Convention). From a practical point of view, the purpose of exchange programs is to insure that in participating countries there are designated, comprehensive collections of foreign official publications. Without these programs, such collections are unlikely to exist, due to decreasing budgets, the low priority of foreign official publications in collection plans, and sometimes inadequate bibliographic control. At any rate, the establishment of the International Exchange of Official Publications cannot serve its purpose if the states which joined in the Convention do not provide to their exchange authority the necessary number of free copies or corresponding funds for their procurement. This will apply as well to the exchange of government information in the electronic age. The methods may change, but not the obligations and purposes as laid down in the Convention.

Notes

1. On 15 March 1886 in Brussels, two international exchange conventions were concluded, the "Convention A for the International Exchange of Official Documents, Scientific and Literary Publications" which is treated here, and the "Convention B for the Immediate Exchange of Official Journals, Public Parliamentary Annals and Documents", in which the governments concerned engaged themselves besides to transmit one copy each of the publications mentioned as soon as published to the "legislative chambers of each Contracting State". Among the contracting states of both conventions in 1886 were Belgium, Brazil, Italy, Portugal, Serbia, Spain, the U.S.A., and (only signatory to Convention A) Switzerland. - For the text of the Conventions, cf. Handbook on the International Exchange of Publications. Manuel des échanges internationaux de publications. ... 3rd edition. Paris: UNESCO, 1964, pp.61-62 (English versions of the French original texts; Russian versions are on pp. 302-303).

2. Quoted from the Law of 20 May 1969 on the Convention of 5 December 1958 Concerning the Exchange of Official Publications and Government Documents between States, in: Bundesgesetzblatt [Federal Law Journal], Part II, 1969, pp. 997-1011.

3. UNESCO's Standard-Setting Instruments. V.1.A.2. Paris 1980, including suppl. 3 (1994).

4. See note 2.

5. Cf. the report of Vivienne Monty (Chair of the Depository Services Remodelling Committee): Proposal for a revised Model Depository System, June 2, 1998.

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